

EXHIBIT 1

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| Case: 24CH1:17-cv-02569-SS | | Document #: 3 | | Filed: 11/21/2017 | | Page 1 of 1 | |
| COVER SHEET Civil Case Filing Form <i>(To be completed by Attorney/Party Prior to Filing of Pleading)</i> | | Court Identification Docket Number 241CH County # Judicial Court ID District (CH, CI, CO) | | Case Year 2017 | | Docket Number 02569 Local Docket ID | |
| Mississippi Supreme Court Administrative Office of Courts | | Form AOC/01 (Revised 1/1/2001) | | Month Date Year 11 21 17 | | Case Number if filed prior to 1/1/94 | |
| IN THE <u>CHANCERY</u> COURT OF <u>HARRISON</u> COUNTY Short Style of Case: <u>Lakesha Butler V. Coast Electric Power Association</u> MS Bar No. <u>3303</u> Party Filing Initial Pleading: Type/Print Name <input type="checkbox"/> Check (✓) if Not an Attorney <input type="checkbox"/> Check (✓) if Pro Hac Vice Signature <u>WALKER LA. Xones III</u> Compensatory Damages Sought: \$ _____ Punitive Damages Sought: \$ _____ Is Child Support contemplated as an issue in this suit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes" is checked, please submit a completed Child Support Information Sheet with Final Decree/Judgment | | | | | | | |
| PLAINTIFF - PARTY(IES) INITIALLY BRINGING SUIT SHOULD BE ENTERED FIRST (FIRST NAME IN SHORT STYLE) - ENTER ADDITIONAL PLAINTIFFS ON SEPARATE FORM | | | | | | | |
| Individual | <u>Butler</u> | <u>Lakesha</u> | <u>(</u> | <u>Maiden Name, if Applicable</u> | | | |
| Address of Plaintiff | <u>Harrison County, Mississippi</u> | | | | | | |
| <input type="checkbox"/> Check (✓) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: | <u>Estate of</u> | | | | | | |
| <input type="checkbox"/> Check (✓) if Individual Plaintiff is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity: | <u>D/B/A / Agency</u> | | | | | | |
| Business | <u>Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated</u> | | | | | | |
| <input type="checkbox"/> Check (✓) if Business Plaintiff is filing suit in the name of an entity other than the above, and enter below: | <u>D/B/A:</u> | | | | | | |
| DEFENDANT - NAME OF DEFENDANT (FIRST NAME IN SHORT STYLE) - ENTER ADDITIONAL DEFENDANTS ON SEPARATE FORM | | | | | | | |
| Individual | <u>Last Name</u> | <u>First Name</u> | <u>(</u> | <u>Maiden Name, if Applicable</u> | <u>Middle Init.</u> | <u>Jr/Sr/Mr/Ms</u> | |
| <input type="checkbox"/> Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: | <u>Estate of</u> | | | | | | |
| <input checked="" type="checkbox"/> Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity: | <u>D/B/A / Agency</u> | | | | | | |
| Business | <u>COAST ELECTRIC POWER ASSOCIATION</u> | | | | | | |
| <u>Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated</u> | | | | | | | |
| <input type="checkbox"/> Check (✓) if Business Defendant is being sued in the name of an entity other than the above, and enter below: | <u>D/B/A:</u> | | | | | | |
| ATTORNEY FOR THIS DEFENDANT: | <u>Bar No.</u> | <u>or</u> | <u>Name:</u> | <u>Pro Hac Vice (✓)</u> | | | |
| <u>(If known)</u> | | | | | | | |
| <i>In left hand column, check one (1) box that best describes the nature of this suit. In right hand column check all boxes which indicate secondary claims.</i> | | | | | | | |
| Business/Commercial | | Probate | | Children and Minors - Non-Domestic | | Torts-Personal Injury | |
| <input type="checkbox"/> Accounting (Business) | <input type="checkbox"/> Accounting (Probate) | <input type="checkbox"/> Adoption - Noncontested | <input type="checkbox"/> Bad Faith | <input type="checkbox"/> Asbestos | <input type="checkbox"/> Chemical Spill | <input type="checkbox"/> Dioxin | <input type="checkbox"/> Hand/Arm Vibration |
| <input type="checkbox"/> Bankruptcy | <input type="checkbox"/> Birth Certificate Correction | <input type="checkbox"/> Consent to Abortion for Minor | <input type="checkbox"/> Fraud | <input type="checkbox"/> Dioxin | <input type="checkbox"/> Loss of Consortium | <input type="checkbox"/> Hand/Arm Vibration | <input type="checkbox"/> Hearing Loss |
| <input type="checkbox"/> Business Dissolution - Corporation | <input type="checkbox"/> Commitment | <input type="checkbox"/> Removal of Minority | <input type="checkbox"/> Malpractice - Legal | <input type="checkbox"/> Hand/Arm Vibration | <input type="checkbox"/> Malpractice - Medical | <input type="checkbox"/> Radioactive Materials | <input type="checkbox"/> Other |
| <input type="checkbox"/> Business Dissolution - Partnership | <input type="checkbox"/> Conservatorship | <input type="checkbox"/> Other | <input type="checkbox"/> Negligence - General | <input type="checkbox"/> Radioactive Materials | <input type="checkbox"/> Negligence - Motor Vehicle | <input type="checkbox"/> Wrongful Death | |
| <input type="checkbox"/> Debt Collection | <input type="checkbox"/> Guardianship | | <input type="checkbox"/> Other | <input type="checkbox"/> Asbestos | <input type="checkbox"/> Chemical Spill | <input type="checkbox"/> Dioxin | |
| <input type="checkbox"/> Employment | <input type="checkbox"/> Heirship | | <input type="checkbox"/> Bond Validation | <input type="checkbox"/> Eminent Domain | <input type="checkbox"/> Hand/Arm Vibration | <input type="checkbox"/> Radioactive Materials | |
| <input type="checkbox"/> Examination of Debtor | <input type="checkbox"/> Intestate Estate | | <input type="checkbox"/> Civil Forfeiture | <input type="checkbox"/> Extraordinary Wkt | <input type="checkbox"/> Hearing Loss | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Execution | <input type="checkbox"/> Minor's Settlement | | <input type="checkbox"/> Declaratory Judgment | <input type="checkbox"/> Federal Statutes | <input type="checkbox"/> Asbestos | <input type="checkbox"/> Real Property | |
| <input type="checkbox"/> Foreign Judgment | <input type="checkbox"/> Muniment of Title | | <input type="checkbox"/> ERISA | <input type="checkbox"/> Injunction or Restraining Order | <input type="checkbox"/> Eminent Domain | <input type="checkbox"/> Adverse Possession | |
| <input type="checkbox"/> Garnishment | <input type="checkbox"/> Name Change | | <input type="checkbox"/> Municipal Annexation | <input type="checkbox"/> Racketeering (RICO) | <input type="checkbox"/> Judicial Foreclosure | <input type="checkbox"/> Ejectment | |
| <input type="checkbox"/> Pension | <input type="checkbox"/> Power of Attorney | | <input type="checkbox"/> Railroad | <input type="checkbox"/> Partition | <input type="checkbox"/> Lien Assertion | <input type="checkbox"/> Eminent Domain | |
| <input type="checkbox"/> Receivership | <input type="checkbox"/> Testate Estate | | <input type="checkbox"/> Seaman | <input type="checkbox"/> Receiver Appointment | <input type="checkbox"/> Partition | <input type="checkbox"/> Judicial Foreclosure | |
| <input type="checkbox"/> Replevin | <input type="checkbox"/> Will Contest | | <input type="checkbox"/> Other <u>Miss. Code 77-5-235</u> | <input type="checkbox"/> Tax Sale Confirmation/Cancellation | <input type="checkbox"/> Receiver Appointment | <input type="checkbox"/> Lien Assertion | |
| <input type="checkbox"/> Stockholder Suit | | | <input type="checkbox"/> Appeals | <input type="checkbox"/> Title, Boundary &/or Easement | <input type="checkbox"/> Tax Sale Confirmation/Cancellation | <input type="checkbox"/> Ejectment | |
| <input type="checkbox"/> Other | | | <input type="checkbox"/> Administrative Agency | <input type="checkbox"/> Other | <input type="checkbox"/> Title, Boundary &/or Easement | <input type="checkbox"/> Eminent Domain | |
| Domestic Relations | | Statutes/Rules | | Mass Tort | | Real Property | |
| <input type="checkbox"/> Child Custody/Visitation | <input type="checkbox"/> Bond Validation | <input type="checkbox"/> Asbestos | <input type="checkbox"/> Adverse Possession | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Child Support | <input type="checkbox"/> Civil Forfeiture | <input type="checkbox"/> Chemical Spill | <input type="checkbox"/> Ejectment | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Contempt | <input type="checkbox"/> Declaratory Judgment | <input type="checkbox"/> Dioxin | <input type="checkbox"/> Eminent Domain | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Divorce: Fault | <input type="checkbox"/> ERISA | <input type="checkbox"/> Hand/Arm Vibration | <input type="checkbox"/> Judicial Foreclosure | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Divorce: Irreconcilable Differences | <input type="checkbox"/> Eminent Domain | <input type="checkbox"/> Hearing Loss | <input type="checkbox"/> Lien Assertion | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Domestic Abuse | <input type="checkbox"/> Extraordinary Wkt | <input type="checkbox"/> Malpractice - Legal | <input type="checkbox"/> Partition | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Emancipation | <input type="checkbox"/> Federal Statutes | <input type="checkbox"/> Malpractice - Medical | <input type="checkbox"/> Receiver Appointment | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Modification | <input type="checkbox"/> Injunction or Restraining Order | <input type="checkbox"/> Negligence - General | <input type="checkbox"/> Tax Sale Confirmation/Cancellation | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Paternity | <input type="checkbox"/> Municipal Annexation | <input type="checkbox"/> Negligence - Motor Vehicle | <input type="checkbox"/> Title, Boundary &/or Easement | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Property Division | <input type="checkbox"/> Racketeering (RICO) | <input type="checkbox"/> Products Liability | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Separate Maintenance | <input type="checkbox"/> Railroad | <input type="checkbox"/> Wrongful Death | | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Termination of Parental Rights | <input type="checkbox"/> Seaman | | | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> UIFSA (formerly URESA) | <input type="checkbox"/> Other | | | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Other | | | | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| Contract | | Appeals | | Civil Rights | | Other | |
| <input type="checkbox"/> Breach of Contract | <input type="checkbox"/> County Court | <input type="checkbox"/> Elections | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Installment Contract | <input type="checkbox"/> Hardship Petition (Driver License) | <input type="checkbox"/> Habeas Corpus | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Insurance | <input type="checkbox"/> Justice Court | <input type="checkbox"/> Post Conviction Relief | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Product Liability under Contract | <input type="checkbox"/> MS Employment Security Comm'n | <input type="checkbox"/> Prisoner | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Specific Performance | <input type="checkbox"/> Municipal Court | | | | | | |
| <input type="checkbox"/> Other | <input type="checkbox"/> Oil & Gas Board | | | | | | |
| | <input type="checkbox"/> Workers' Compensation | | | | | | |
| | <input type="checkbox"/> Other | | | | | | |

(3)

IN THE CHANCERY COURT OF
HARRISON COUNTY, MISSISSIPPI

LAKESHA BUTLER, ET AL.

PLAINTIFFS

vs.

Civil Action No. 17-2569(3)

COAST ELECTRIC POWER
ASSOCIATION

DEFENDANT

SUMMONS

To:

Robert J. Occhi
COAST ELECTRIC POWER ASSOCIATION
18020 Hwy 603
Kilm, MS 39556

The Complaint which is attached to this Summons is important and you must take immediate action to protect your rights. You are required to mail or hand deliver a copy of a written response to the Complaint to the following:

WALKER WILLIAM JONES, III
JUSTIN R. GLENN
P.O. Box 22626, Jackson, MS 39225-2626
COSMICH, SIMMONS & BROWN, PLLC

Your response must be mailed or delivered within thirty (30) days from the date of delivery of this Summons and Complaint or a default judgment will be entered against you for the moneys or things demanded in the Complaint.

You must also file the original of your responses with the Clerk of this Court within a reasonable time afterwards.

ISSUED under my hand and seal of said Court, this the 22nd day of November, 2017.

(SEAL)

Harrison County Chancery Clerk
P.O. Drawer CC
Gulfport, MS 39502

By: J. P. Clegg

, D.C.



COPY

IN THE CHANCERY COURT OF HARRISON COUNTY MISSISSIPPI

LAKESHA BUTLER

v.

COAST ELECTRIC POWER
ASSOCIATION

FILED
NOV 21 2017

JOHN McADAMS, CHANCERY CLERK

D.C.

Plaintiff

Civil Cause No. 17-2569(3)

Defendant

COMPLAINT

Plaintiff Lakesha Butler alleges the following against Defendant Coast Electric Power Association:

ALLEGATIONS COMMON TO ALL CLAIMS

Nature of the Action

1. Defendant Coast Electric Power Association is an electric utility company. It provides services to more than 79,000 members, and its service area stretches into 3 Mississippi counties.
2. Coast Electric Power Association is a not-for-profit electric cooperative corporation. A "cooperative" corporation is one that is democratically controlled by its members; operated at cost and without profit; and managed solely for the benefit of its rate-paying customers.
3. An electric cooperative may not retain revenues that it does not need to fund its operations. Such excess revenues are considered improper "profits." Any such profits must be returned to the member-ratepayers to whom they belong.
4. To effectuate this requirement, Mississippi law provides that each year, an

electric cooperative must refund any excess revenues to its members (the “Refund Requirement”). Miss. Code Ann. § 77-5-235.

5. Despite the Refund Requirement, Coast Electric Power Association has accumulated millions of dollars of revenue that it has failed to return to its members. As of the end of the 2016 calendar year, it held more than \$158,181,000 million of its member-ratepayers’ money (which it refers to as “patronage capital”) and has invested nearly one-third (1/3) of it in associated organizations.

6. Coast Electric Power Association currently holds Patronage Capital equal to 45% of its Assets. This number far exceeds the recommended 30%. The amount of capital in excess of 30% amounts to nearly \$53,000,000 million and this amount should be refunded to its members.

7. The Refund Requirement does not mean that Coast Electric Power Association was not entitled to retain any member equity. It requires the return of excess member equity, that is, amounts that are not necessary to pay for expenses, debt service or reasonable reserves.

8. But the member equity held by Coast Electric Power Association is not necessary to pay for expenses, debt service or reasonable reserves. The federal agency responsible for issuing loans to electric cooperatives has established a safe harbor, a level of capital and liquidity that will always be sufficient to maintain adequate reserves to allow for the return of member equity.

9. At the close of the 2016 fiscal year, Coast Electric Power Association held member equity equal to approximately 45% of its total assets. This ratio far exceeded that

of many of the other electric cooperatives in the State. Coast Electric Power Association could easily return more than \$53,000,000 million in member equity to its member-ratepayers while maintaining a safe and stable level of equity and short-term assets.

10. Coast Electric Power Association does return member equity to its members. But Coast Electric Power Association provides these refunds by overcharging members for services, and then returning a portion of the overcharge to them in a show of benevolence. This money reflects overpayments that ought never to have been made in the first place, and its return is merely the repayment of the member-ratepayers' own money back to them.

11. Coast Electric Power Association's retention of excess member equity subverts the very purpose of the cooperative form, as it accumulates capital at member-ratepayers' expense. Member-ratepayers do not receive any return on their member equity, and instead forego the time-value and use of their own money.

12. Coast Electric Power Association's retention of these massive amounts of member-ratepayer funds presents a special source of concern. Congressman Jim Cooper (D., Tennessee)¹ wrote an article describing the great potential for mismanagement and self-dealing that is created when electric cooperatives retain excess amounts of equity, such as is the case with Coast Electric Power Association.

13. Plaintiff, therefore seeks to have Coast Electric Power Association return

¹ Congressman Cooper is a graduate from the University of Oxford as well as Harvard Law School.

the excess revenues it has earned to its member-ratepayers in proportion to their patronage for the given year, as required under Miss. Code Ann. § 77-5-235.

Parties

14. Lakesha Butler is a resident of Mississippi and a member-ratepayer of Coast Electric Power Association.

15. Members 2-79,000 are member-ratepayers of Coast Electric Power Association who will be joined under Miss. R. Civ. P 19(a)(2).

16. Coast Electric Power Association is a not for profit² rural electric cooperative formed under the Rural Electric Cooperative Law. It has the power to sue and be sued under Miss. Code Ann. § 77-5-23(a).

Jurisdiction

17. This is an action in equity requiring Coast Electric Power Association to place excess member capital into a constructive trust and distribute the same in proper amounts to its members.

18. This Court has jurisdiction over the subject matter of this action pursuant to Miss. Const. Ann. Art. 6, § 159 of the Constitution of the State of Mississippi.

19. This Court has personal jurisdiction over Coast Electric Power Association since it is organized and operated in this state; operates, conducts, engages in, and carries on a business or business venture in this state; and has an office and agency in this state.

Venue

² If an Electric Cooperative operates for a profit it can lose its 501(C)(12) tax exempt status.

20. This Court is the proper venue pursuant to Miss. Code Ann. § 11-11-3 as Coast Electric Power Association has, or usually keeps, an office for transaction of its customary business in Harrison County, Mississippi.

Factual Allegations

I. **Coast Electric Power Association Must Refund Excess Revenues to Its Members Immediately.**

a. **Coast Electric Power Association is Organized and Operated in a Cooperative Manner for the Benefit of Its Member-Ratepayers and Not for Accumulating Profit.**

21. The principles by which electric cooperatives are organized and operated are fundamentally different from the principles governing the traditional corporate model widely used in America's capitalist system.

22. In the traditional corporate model, shareholders' rights depend upon the shareholders' investment of capital. Shareholders vote based on the amount of stock they purchase, and expect to profit in proportion to their risk. The corporation is organized and operated to maximize profit. Shareholders choose directors based on their ability to increase corporate profits.

23. In contrast, electric cooperatives are organized in a "democratic" fashion, with each member-ratepayer having an equal vote without regard to his or her capital investment. Trustees must be chosen from among the cooperative's members.

24. Electric cooperatives are designed to operate without profit, for the benefit of consumer-ratepayers and not for the benefit of the corporate entity itself or any investors. Electric cooperatives do not provide for or allow a return on capital.

25. Under common law, these organizational and operational principles are frequently summarized as: (1) electric cooperatives must be democratically controlled by their members, (2) electric cooperatives must operate at cost, and (3) electric cooperatives must be operated for the benefit of their members alone.

26. Cooperatives therefore maintain a special relationship of trust with their members since they operate for their members' benefit and not to maximize profit.

27. Electric cooperatives that operate pursuant to these principles are exempt from federal income taxes under Internal Revenue Code section 501 (c) (12) and its predecessors. Coast Electric Power Association is classified as a section 501 (c) (12) corporation for federal tax purposes.

28. To ensure that electric cooperatives actually are operating according to their fundamental organizational and operating principles to maintain their 501(c)(2) status, the IRS requires, among other things, that:

- They keep adequate records of each member's rights and interest in the assets of the organization;
- They distribute any savings to members in proportion to the amount of business done with them; and
- They cannot retain more funds than they need to meet current losses and expenses.

A. **Mississippi Electric Cooperatives Are Organized and Operated for the Benefit of Their Member Ratepayers and Not for Accumulating Profit.**

29. In 1939, the State of Mississippi enacted the State Rural Electrification Authority Law(SREAL). The SREAL authorizes the formation of electric cooperatives. Under the SREAL, cooperatives must be nonprofit. Miss. Code Ann. § 77-5-1.

30. The basic principles governing electric cooperatives' treatment of member equity apply in Mississippi as well. Any operating margin belongs to member-ratepayers and must be allocated to member-ratepayers in accounts held in their name. All excess member equity must be returned immediately.

31. Mississippi law specifically describes a methodology for the mandatory return of excess revenues each year.

32. Under that methodology the revenues and receipts of a corporation shall first be devoted:

- To such operating and maintenance expenses and to the payment of such principal and interest; and
- To such reserves for improvements, new construction, and contingencies as the board may from time to time prescribe.
- Revenues and receipts not needed for these purposes shall be returned to the members.

II. Electric Cooperatives Require Very Little Member Equity and Very Little Cash to Operate Effectively.

33. Electric cooperatives such as Coast Electric Power Association are not only utilities, with a stable and secure income stream, but also are eligible for federal loans at incredibly low rates. They therefore can fund expenses, debt payments and reasonable reserves without holding significant amounts of member equity or cash and cash equivalents. Instead, they retain member equity and invest it in related associations and unlawfully earn interest that lawfully belongs to the members.

A. Electric Cooperatives Typically Do Not Need to Retain Equity in Excess of Thirty Percent of Their Total Assets.

34. Electric cooperatives are eligible for federal loans and loan guaranties from the Rural Utilities Service (“RUS”), a division of the United States Department of Agriculture. RUS loans are made available at interest rates that are based on the federal Treasury Department’s cost of borrowing, plus 1/8 of one percent. The cost to an electric cooperative for a 30-year loan provided or guaranteed by the RUS in May 2015 was approximately three percent per year.

35. In 1996, cooperatives joined together to create the National Rural Utilities Cooperative Finance Corporation (“CFC”). The CFC also makes guaranteed loans available to electric cooperatives at the Treasury rate plus 1/8 of one percent.

36. Because electric cooperatives have access to federal loan guaranties at very low interest rates, they can function with a very low ratio of equity to debt.

37. Electric cooperatives also may maintain lower levels of member equity because they operate a business that provides a safe, guaranteed return. Electric cooperatives operate utilities. As is the case in Mississippi, the state prohibits competition for the distribution of electricity. Frequently, as also is the case in Mississippi, electric cooperatives may set their own rates for services.

38. As a result, there is almost no risk that an electric cooperative will be unable to repay its loans.

39. RUS also makes hardship loans available to electric cooperatives if they have suffered a severe unavoidable hardship, such as a natural disaster. Thus, even when an electric cooperative faces circumstances that in other industries might require resort to

member equity, the federal government makes sure that loans are available instead. The availability of such programs makes debt financing even safer.

40. Lenders in the private sector often will require that borrowers provide a minimum amount of equity before they will finance a loan. In contrast, the RUS and CFC have eliminated any minimum equity requirement for the loans they issue or guarantee further lessening the need to retain member equity.

41. According to RUS and CFC it is clear that a thirty-percent equity level is conservative and highly safe.

42. The RUS regulations address a situation in which an electric cooperative distributor is required by its loan documents to obtain RUS approval before retiring member equity, 7 C.F.R. 1717.617. The regulations provide for automatic approval when an electric cooperative's equity will be greater than or equal to 30% of total assets, so long as the cooperative is current on its payments, not in default, and has a 1:1 current ratio.

Id.

43. On information and belief, the CFC authorizes the retirement of member equity so long as equity remains at or above 20% of assets.³

44. Similarly, certain provisions of the RUS standard mortgage and loan contract require the RUS to approve of certain investments, loans, and guarantees by electric cooperatives. Electric cooperatives are exempt from this requirement if they meet certain financial criteria, including maintaining equity that is equal to at least 27% of total assets.

³ Coast Electric Power Association is currently holding member equity in the amount of \$88,306,000 million above the 20% authorized by the CFC.

7 C.F.R. § 1717.656.

45. In his Harvard Journal Article on Legislation, one of Congressman Cooper's concerns was that electric cooperatives were holding excess amounts of member equity. Congressman Cooper specifically analyzed the amount of member equity that electric cooperatives should maintain. He concluded that "coops with equity levels far below 30% can refund capital credits."

B. Electric Cooperatives Typically Do Not Need to Retain Cash in Excess of Current Liabilities.

46. For many of the same reasons that electric cooperatives can operate at low levels of equity, they also can operate with a low ratio of current assets to current liabilities.

47. Electric cooperatives are utilities that operate monopolies. They have a regular and predictable cash flow. If the need arises, they can obtain hardship loans from the RUS.

48. The RUS automatically approves distributions of member equity if the current ratio is 1:1 or higher. 7 C.F.R. § 1717.617.

IV. Coast Electric Power Association Failed to Return Excess Member Equity.

A. Cooperatives Such as Coast Electric Power Association Are at Risk of Being Co-opted by Insiders.

49. Electric cooperatives were highly successful in achieving their mission of bringing electricity to rural areas.

50. Over time, however, the novelty of electricity had worn off. The ordinary ratepayers who comprised the membership of the cooperatives lost interest in supervising their operations.

51. At the same time, flaws inherent in the non-capitalist structure of these entities presented significant challenges to the very values of fairness that electric cooperatives were designed to effect.

52. In the absence of oversight, and without the disciplinary forces of the market, many electric cooperatives began to operate for the benefit of insiders, without regard to the best interests of their member-ratepayers.

53. These flaws were highlighted in a widely-cited article written by Congressman Jim Cooper (D., Tennessee). See Representative Jim Cooper, *Electric Cooperatives: From New Deal to Bad Deal?*, 45 Harv. J. on Legis. 335, 341-42 (2008).

54. As Congressman Cooper explained:

[C]oops have [great] potential for mismanagement and self-dealing. Unclaimed millions of dollars of coop equity can flood local banks, brokerages, and car dealerships, particularly when controlled by overlapping boards of directors. Employees can be paid while doing no work. Managers can easily become more concerned with providing benefits to insiders than to ratepayers, especially if ratepayers are not looking.

55. He also explained how this situation came to pass: “Electric coops are not genuine cooperatives because they are not voluntary associations of people with specific expertise in the cooperative venture. Coop membership may have been voluntary during the Depression when electricity was an exciting novelty, but today it is a daily necessity. Customers do not freely choose to join an electric coop; they buy from the monopoly because they have no choice.”

56. In addition, he observed, “few if any coop customers are knowledgeable

about the electricity business. Coop customers have other jobs and will sign almost anything to get electricity.”

57. As a result, Congressman Cooper lamented, “Coop managers and employees too often become the *de facto* owners of the coop.”

58. He concluded that “coop managers have often failed to serve their members interests.”

B. Coast Electric Power Association Improperly Retains Massive Amounts of Excess Revenues.

59. Dating back for many years, Coast Electric Power Association has retained excess revenues that it earned. There was no reasonable basis for its retaining those excess revenues, since it already had sufficient cash and member equity to fund any reasonable expenses, debt service and reserves.

1. Coast Electric Power Association Holds Excessive Member Equity

60. Coast Electric Power Association also holds an enormous amount of member equity. At the close of fiscal year 2016, it held more than \$158,000,000 million in member equity.

61. Coast Electric Power Association’s member equity is well in excess of the 30% that might be necessary and that lenders consider a safe harbor for refunding capital credits.

62. If Coast Electric Power Association were to reduce its member equity to the 30% safe harbor, it could, as of the close of fiscal year 2016, return approximately \$53,000,000 million to its member-ratepayers.

3. Coast Electric Power Association Does Not Return Enough Excess Revenues to Member-Ratepayers.

63. Despite its substantial amounts of member equity, Coast Electric Power Association regularly returns only a small portion of its excess revenues to its member-ratepayers. The rest is retained by Coast Electric Power Association as new member equity, even though it is not necessary to fund expenses, debt service or reserves and easily could be returned to the member-ratepayers in the form of refunds.

64. Coast Electric Power Association touts the fact that it allocates the excess revenues it earns each year to capital accounts held in the name of its members and that it returns capital to members and former members in an amount determined by the Board of Trustees each year.

65. Yet even while it returns some capital, it accumulates more all the while it is generating investment income from the member equity that it has invested.

66. Coast Electric Power Association is not returning excess revenues in accordance with legal requirements. Instead, it is improperly overcharging members and holding on to the overcharges.

67. Then, it later takes credit for having refunded member equity it never should have retained in the first place.

V. Coast Electric Power Association's Failure to Properly Return Member Equity Imposes Significant Harm on Its Member-Ratepayers.

68. Member equity is a form of coerced borrowing that occurs when electric cooperatives charge its member-ratepayers more than its services actually cost. This coerced borrowing is a very bad deal for member-ratepayers.

69. While electric cooperatives can borrow money at what is effectively the Treasury rate, its individual member-ratepayers typically cannot. Instead, when a member-ratepayer borrows money to finance a tractor, or a home repair, or college tuition, he or she must pay significantly higher interest rates than those available to the electric cooperative. In some cases, member-ratepayers may be forced to forego critical expenditures, or to carry credit-card debt with high monthly rates, even as the member equity he or she has accumulated lies dormant with the electric cooperative or is used to generate investment income, it is generated for the cooperative and not the members themselves.

70. When an electric cooperative maintains member equity in excess of its needs, it is converting its member-ratepayer funds to its own use without legitimate purpose, and to the detriment of the member-ratepayer.

71. Cooperatives sometimes argue that maintaining excess capital has the overall effect of reducing rates. This argument really means only that cooperatives can keep their rates artificially low by coercing their members to provide them with interest-free loans. In other words, the cooperative appropriates the time value of its member-ratepayers' money and claims credit for having used that money for interest-free loans.

72. In 2005, the National Rural Electric Cooperative Association and the electric cooperative lending organization, the CFC, published the *Capital Credits Task Force Report: A Distribution Cooperative's Guide to Making Capital Credits Decisions*. The Report's authoring bodies were an electric cooperative trade association and lending organization that had a strong interest in protecting the interests of their members/borrowers. Nevertheless, the Report concluded that "lower equity is likely to result in a lower overall

cost to the member."

First Cause of Action

Violation of Miss. Code Ann. Sec. 77-5-235 Requirement to Refund Excess Member Equity Prior to July 1, 2016.

73. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 72 above as if set forth fully herein.

74. Under Mississippi Statute prior to July 1, 2016, revenues and receipts that are not needed for the co-operative's specific purpose must be returned to the members.

75. Coast Electric Power Association has historically either returned an insufficient amount or not returned an amount at all.

76. Coast Electric Power Association is currently holding in excess of \$53,000,000 million.

77. This amount is 15% over the amount needed to cover operating and maintenance expenses.

78. Representative Cooper as published in the Harvard Journal of Legislation has opined that all that a co-operative need maintain of member equity is 30%.

79. The complete absence of refunds or the inadequacy of the refunds have resulted in the cooperative holding money that rightfully belongs to the members.⁴

Second Cause of Action
Fraudulent Concealment

80. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 79 above as if set forth fully herein.

⁴ Members are deprived of the money and the investment opportunities that come with it.

81. Coast Electric Power Association paid capital credits to its customers that were insufficient, but led customers to believe they were receiving what they were entitled to receive.

82. In paying out capital credits in amounts less than what was actually owed to its members, Coast Electric Power Association intentionally hid from its members sums of money they were entitled to receive.

83. A member, even with due diligence, would be unable to uncover Coast Electric Power Association's concealment of the amount actually to be paid because of the complexity involved with calculating the capital credits.

Third Cause of Action
Breach of Fiduciary Duty

84. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 83 above as if set forth fully herein.

85. As an electric cooperative, Coast Electric Power Association owed a fiduciary duty to its member-ratepayers to distribute patronage refunds to its members each year in accordance with the patronage paid by respective members during such fiscal year, to the extent its revenues exceeded expenses, debt service and reserves.

86. Coast Electric Power Association's revenues have exceeded the amount necessary to pay expenses, debt service and reserves, but Coast Electric Power Association did not distribute patronage refunds to its members in those years as it was required to do based upon the fiduciary duty owed to its members. Plaintiffs are entitled to payment of excess member capital in the amount of at least \$53,000,000 million.

87. Each member is also entitled to attorneys' fees and costs for their efforts to have money held in trust for the benefit of the constructive trust beneficiaries.

Fourth Cause of Action
Unjust Enrichment

88. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 87 above as if set forth fully herein.

89. Plaintiff unknowingly conferred on Coast Electric Power Association a benefit in the form of rate payments in excess of the amounts necessary to cover expenses, debt service and reasonable reserves.

90. Coast Electric Power Association has accepted and retained the benefit, and under the circumstances, it would be inequitable for it to retain the benefit without paying for it. Plaintiffs' are entitled to payment of excess member capital in the amount of at least \$53,000,000 million plus interest.

Fifth Cause of Action
Conversion

91. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 90 above as if set forth fully herein.

92. Coast Electric Power Association has a duty to distribute patronage refunds to its members each year in accordance with the patronage paid by respective members during such fiscal year to the extent its revenues exceeded expenses, debt service and necessary reserves.

93. Coast Electric Power Association's revenues have exceeded the amount necessary to pay expenses, debt service and reserves, but Coast Electric Power Association

did not distribute patronage refunds to its members in those years as required by law.

94. Coast Electric Power Association wrongfully deprived its member-shareholders of their right to the member equity with the intent to deprive them of their right to such member equity. Plaintiffs are entitled to payment of excess member capital of at least \$53,000,000 million.

Sixth Cause of Action
Constructive Trust

95. Plaintiff repeats and re-allege the allegations contained in paragraphs 1 through 94 above as if set forth fully herein.

96. Plaintiff paid her rates based on an express or implied promise that excess revenues would be returned to them annually.

97. Plaintiff made her payments to Coast Electric Power Association in reliance upon the express or implied promise that they would be refunded excess revenues.

98. With respect to excess member equity that Coast Electric Power Association was required to refund to its members, Coast Electric Power Association held a fiduciary relationship and a confidential relationship of trust with Plaintiff.

99. Coast Electric Power Association has been unjustly enriched by retaining possession of the excess revenues it was required to return to Plaintiff.

100. It is against equity that Coast Electric Power Association should retain such excess revenues.

101. Plaintiff is entitled to the return of all excess member capital held by Coast Electric Power Association Electric, in the amount of approximately \$53,000,000 million.

102. Plaintiff is entitled to attorneys' fees for their efforts to have money held in trust and ultimately returned to the trust beneficiaries.

PUNITIVE DAMAGES

Plaintiff reserves her right to amend the complaint to seek punitive damages to the extent that discovery supports a claim for such damages.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for the following against Coast Electric Power Association:

1. For compensatory damages to its members in an amount equal to \$53,000,000 million or such greater amount as determined by the Court;
2. Enjoining Coast Electric Power Association to remit to its members an amount equal to \$53,000,000 million or such greater amount as determined by the Court;
3. To establish a constructive trust for \$53,000,000 million under this Courts equitable powers and pursuant to Miss. Code Ann. Sec. 91-8-401(4) to hold all excess capital that must be refunded to its members.
4. Enjoining Coast Electric Power Association from future violations by appointing an independent trustee or receiver to oversee and protect the interests of the member-ratepayers in their member equity until repaid;
5. Awarding Plaintiffs' the cost of prosecuting this action, including reasonable attorneys' fees, expert fees and costs reasonably incurred, including for their efforts to have money held in trust returned to member-beneficiaries; and attorney's fees under Miss. Code

Ann. Sec. 91-8-102; and

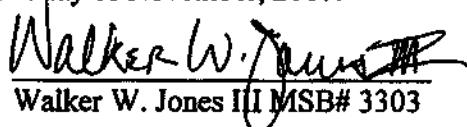
6. Granting a trust under Sec. 91-8-102 that can name a beneficiary that can be ascertained now or in the future. The trust can be established now and the 79,000 members can send in claim forms as they are notified of the return of their funds.

7. Establish a trust under the statutory authority of the Mississippi Uniform Trust Code adopted in 2014 (Sec. 91-8-101) that would hold the excess capital funds of \$53,000,000 million that will be paid from Coast Electric Power Association. Under Sec. 91-8-402, the trust can be for the benefit of beneficiaries known, such as the plaintiffs' in this case, and beneficiaries that can be ascertained in the future from the approximately 79,000 customers of Coast Electric Power Association.

8. Plaintiffs' ask this court to require Defendant to provide an accounting of all patronage capital accounts held by current and former members, deceased or living, as required by law.

9. Granting such other relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this the 17th day of November, 2017.


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